

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
COMMERCE, *et al.*,

Defendants.

No. 18-cv-02921

**DEFENDANTS' SUR-REPLY IN OPPOSITION  
TO NYIC PLAINTIFFS' MOTION FOR SANCTIONS**

**EXHIBIT INDEX**

28. Second Declaration of John Gore
29. Plaintiffs' Trial Exhibit PX-052
30. Plaintiffs' Joint Proposed Post-Trial Findings of Fact (excerpt)
31. Supplemental Declaration of Peter Davidson

**EXHIBIT 28**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, *et al.*,

Plaintiffs,

v.

18-CV-2921 (JMF)

UNITED STATES DEPARTMENT OF  
COMMERCE, *et al.*,

Defendants.

**SECOND DECLARATION OF JOHN GORE**

I, John Gore, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I was the Principal Deputy Assistant Attorney General in the Civil Rights Division at the U.S. Department of Justice, a position I held from July 28, 2017 to November 5, 2019. I served as the Acting Assistant Attorney General for the Civil Rights Division from July 28, 2017 to November 5, 2018. As the Acting Assistant Attorney General, I was the senior management official of the Civil Rights Division. As a part of my official duties, I was responsible for the overall supervision of the Division's enforcement of the federal statutes and regulations that fall within the Division's purview, including the Voting Rights Act of 1965.

2. The following statements are based upon my personal knowledge. These statements are provided in support of the Defendants' response to the sur-reply filed by the New York Immigration Coalition ("NYIC") in the above-captioned case concerning their motion for sanctions. I previously submitted a declaration dated August 2, 2019 in support of Defendants' opposition to NYIC's motion for sanctions.

3. As I have previously testified, I prepared the December 12, 2017, letter to the Census Bureau from Arthur E. Gary, General Counsel of the Department of Justice's Justice Management Division, requesting that a citizenship question be reinstated on the 2020 decennial census questionnaire ("the Gary Letter").

4. During my deposition in this case, I was asked whether I "sometimes use[d] . . . personal . . . text messages . . . to communicate about" Department of Justice work. I responded that "I don't think I have used it for DOJ work, now that I think about it." My response accurately reflected my thoughts and recollection: neither during the document collection or my deposition in this case, nor at the time I submitted my prior declaration, did I recall ever having sent or received text messages concerning official government business on my personal phone.

5. After reviewing NYIC's sur-reply, I reviewed all of my text messages on my personal phone from January 2017 through the present to determine whether I had sent or received any text messages related to my work on the Department of Justice's request to reinstate a citizenship question on the decennial census questionnaire. There is only one text-message chain related to that matter on my personal phone, and it appears to be a version of the October 6, 2017, text-message chain that Mark Neuman submitted to the House Oversight Committee. The chain I have contains a message, apparently from Mr. Neuman, stating "I am sitting inside the café SE corner," to which I responded, "On my way." The exchange appears to have occurred just prior to my October 2017 meeting with Mr. Neuman. The chain I have also contains a draft version, from Mr. Neuman, of a proposed letter that he also provided to me in hard copy ("the Neuman Letter"), but it does not contain the pictures of the other Census documents that appear in the chain that NYIC submitted to this Court. Neither the chain I have nor the chain NYIC submitted to the Court has time stamps for the individual text messages.

6. I had no recollection of this text-message chain or the texted version of the Neuman Letter during the document collection or my deposition, or when I submitted my prior declaration in this case. Reviewing this text-message chain and the texted version of the Neuman Letter does not refresh my recollection that I received them, and I have no recollection of ever reading them.

7. The texted version of the Neuman Letter, like the hard-copy version, was not a draft of the Gary Letter.

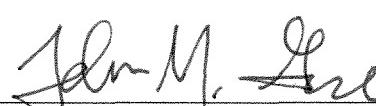
8. As with the hard-copy version of the Neuman Letter, I did not consult, refer to, or rely upon the texted version of the Neuman Letter in drafting the Gary Letter.

9. As with the hard-copy version of the Neuman Letter, I have no personal knowledge regarding who authored, reviewed, commented on, or contributed to the texted version of the Neuman Letter.

10. Nothing in the texted version of the Neuman Letter or in NYIC's motion for sanctions, reply, or sur-reply affects, much less alters, my prior testimony regarding the preparation of the Gary Letter. I prepared the Gary Letter. In doing so, I did not rely upon any version of the Neuman Letter, any other information provided to me by Mr. Neuman, or anything communicated to me by anyone at the Department of Commerce, the White House, or the Department of Homeland Security. I have never met, communicated with, or spoken to Dr. Thomas Hofeller. I first became aware of Dr. Hofeller's purported views on reinstatement of a citizenship question and the purported 2015 Hofeller study on May 30, 2019—more than 17 months after the Gary Letter was sent—when I reviewed NYIC's motion for an order to show cause and accompanying press reports. I did not consult, refer to, or rely upon anything related to Dr. Hofeller, his purported views on the reinstatement of a citizenship question, or the purported 2015 Hofeller study in preparing the Gary Letter.

I declare under penalty of perjury that the foregoing is true and correct.

Washington, DC  
November 22, 2019

  
John Gore

**EXHIBIT 29**

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**From:** [REDACTED]@doc.gov [REDACTED]@doc.gov]  
**Sent:** 10/8/2017 10:54:41 PM  
**To:** Wilbur Ross [REDACTED]  
**Subject:** Re: Letter from DoJ.

will do...wrapping up my call now.

Sent from my iPhone

> On Oct 8, 2017, at 6:51 PM, Wilbur Ross <[REDACTED]> wrote:  
>  
> Please call me at [REDACTED] WLR  
>  
> Sent from my iPad  
>  
>> On Oct 8, 2017, at 6:47 PM, Davidson, Peter (Federal) <[REDACTED].gov> wrote:  
>>  
>> I'm on the phone with Mark Neumann right now...he is giving me a readout of his meeting last week. I  
can give you an update via phone if you'd like...  
>>  
>> Sent from my iPhone  
>>  
>>> On Oct 8, 2017, at 2:56 PM, Wilbur Ross [REDACTED] wrote:  
>>>  
>>> What is its status? WLR  
>>>  
>>> Sent from my iPad

**EXHIBIT 30**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

18-CV-2921 (JMF)

UNITED STATES DEPARTMENT  
OF COMMERCE, et al.,

Defendants.

THE NEW YORK IMMIGRANT  
COALITION et al.,

Plaintiffs,

v.

18-CV-5025 (JMF)

UNITED STATES DEPARTMENT  
OF COMMERCE, et al.,

Defendants.

**PLAINTIFFS' JOINT PROPOSED POST-TRIAL FINDINGS OF FACT**

439. On September 19, 2017, Secretary Ross sent an email with the subject “Census” advising Peter Davidson that “Wendy and I spoke with the AG yesterday. Please follow up so we can resolve this issue today.” PX-57 (AR).

440. Ms. Teramoto testified that she has no recollection of this event. Teramoto Dep. at 84.

441. On September 22, 2017, Mr. Uthmeier reached out to Mr. Gore. Gore Dep. at 117-18 (objection).

442. Mr. Gore returned Mr. Uthmeier’s call, on or about September 22, 2017, and they discussed the addition of a citizenship question to the 2020 Census. Gore Dep. at 118, 119.

443. Mr. Uthmeier has no experience as counsel in VRA cases, litigating Section 2 redistricting cases involving the use of CVAP data, or otherwise assessing the reliability of CVAP data used in VRA litigation. Gore Dep. at 117-118.

444. After their call, Mr. Gore was also provided Mr. Uthmeier’s August 11 memorandum discussing addition of a citizenship question. Gore Dep. at 118.

445. With the August 11 memorandum, Mr. Gore also received a handwritten note from Mr. Uthmeier. Gore Dep. at 118–119. This handwritten note from Uthmeier to Gore contained information that DOJ considered in drafting the final letter requesting a citizenship question. *Id.* at 123-24. Defendants have withheld this note on the basis of privilege.

446. Mr. Gore responded to that note in a discussion with Mr. Uthmeier and Mr. Davidson, purportedly to provide legal advice in anticipation of litigation. Gore Dep. at 120-124.

447. DOJ relied, in part, on Mr. Uthmeier’s input in reaching its decision to send the December 12, 2017 letter to the Census Bureau. Gore Dep. at 123-124

448. On Sunday October 8, Secretary Ross sent an email to Mr. Davidson with the subject line “Letter from DOJ” and asking “what is its status.” PX-52 (AR).

449. Mr. Davidson responded “I’m on the phone with Mark Neuman right now . . . he is giving me a readout of his meeting last week.” PX-52 (AR).

450. The following day, on October 9 (Columbus Day), Secretary Ross issued a press release applauding Trump Administration programs to “swiftly return illegal entrants” and to “stop sanctuary cities, asylum abuse and chain immigration.” PX-479.

451. Also on October 9, Mr. Willard sent Undersecretary Kelley an email about a citizenship question stating “1) must come from DOJ, 2) court cases you can hang your hat on, 3) every census since 1880, except 2000.” PX-148 (R) (AR).

452. In October of 2017, AAAG Gore, John Zadrozny of the White House Domestic Policy Council, along with Rachael Tucker, Mr. Hamilton, and others from DOJ participating in a conference call to discuss the addition of a citizenship question to the Census without the participation of any Commerce Department or Census Bureau personnel. Gore Dep. at 409–12.

453. During the autumn of 2017, Mr. Gore also discussed a citizenship question with Mr. Neuman with the understanding that he was advising the Department of Commerce and Census Bureau on the issue. Gore Dep. at 438.

454. On or about November 1, 2017, Mr. Gore wrote the initial draft of the letter from DOJ to Census Bureau requesting the inclusion of a citizenship question on the 2020 Decennial Census. Gore Dep. at 126–127 (objection).

455. On Wednesday, November 1, 2017, Mr. Gore emailed Chris Herren, Chief of DOJ’s Voting Section, and copied Ben Aguiñaga. Gore Dep. at 126 (objection); PX-211.

456. The subject of the email was: “Confidential & Close Hold: Draft Letter.” Gore Dep. at 126 (objection). Gore testified that he intended that Herren could not share the draft letter without Gore’s approval. Gore Dep. at 130.

## **EXHIBIT 31**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, *et al.*,

Plaintiffs,

v.

18-CV-2921 (JMF)

UNITED STATES DEPARTMENT OF  
COMMERCE, *et al.*,

Defendants.

**SUPPLEMENTAL DECLARATION OF PETER DAVIDSON**

I, Peter Davidson, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I was the General Counsel of the United States Department of Commerce, a position I held from August 2017 to August 2019. As General Counsel, I was the legal advisor to the Secretary of Commerce and the Department's Chief Legal Officer.
2. The following statements are based upon my personal knowledge. I submit this supplemental declaration in support of Defendants' response to the sur-reply filed by the New York Immigration Coalition ("NYIC") in the above-captioned case concerning their motion for sanctions. I previously submitted a declaration dated August 1, 2019, in support of Defendants' opposition to NYIC's motion for sanctions.
3. I have reviewed NYIC's November 15, 2019, sur-reply filed in this case. That brief cites to a text-message chain between myself and A. Mark Neuman that includes three texts dated October 7 and 8, 2017, and January 3, 2018. I have no recollection of the text messages in this chain and did not have a recollection of these text messages at the time of discovery in this case or

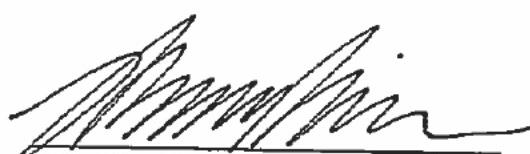
at the time I prepared my August 1, 2019 declaration. Nor did I have any recollection of sending or receiving any other text messages with him at the time of discovery in this case or at the time I prepared my August 1, 2019 declaration. After reviewing NYIC's sur-reply, I conducted a search of the text messages on my personal phone during the period of my employment with the Department of Commerce to determine whether I had sent or received any text messages related to my work on the 2020 Census. I found only one text-message chain related to that matter on my personal phone, and it appears to be a version of the text-message chain in Attachment A of NYIC's Sur-reply. The version on my phone includes an exchange of messages on January 5, 2018, that are not included in the version filed with NYIC's sur-reply. True and correct copies of these January 5, 2018, messages are attached to this declaration. Reviewing this text-message chain on my phone still does not refresh my recollection that I sent or received these texts.

4. According to Plaintiffs' sur-reply, the October 7 and 8, 2017, text messages between myself and Mr. Neuman purportedly reflect a "readout" he gave me of his October 2017 meeting with John Gore, then Acting Assistant Attorney General for Civil Rights. I have no recollection of that "readout" from Mr. Neuman, or of briefing Secretary Ross about it thereafter.

5. As I stated in my prior declaration, I have no recollection of ever discussing the Neuman Letter with Mr. Neuman, whether following his meeting with Mr. Gore, or otherwise.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Alexandria, VA  
November 22, 2019

  
Peter Davidson

**DOJ letter to  
Census**

documentcloud.org

I found this publicly available link on HUFFPOST.

Ok. Thanks.

Jan 5, 2018, 7:05 PM

Do you know the exact number of the fall off in response percentage for the citizenship question compared to other ACS questions?



MN

Mark >

Jan 5, 2018, 7:05 PM

Do you know the exact number of the fall off in response percentage for the citizenship question compared to other ACS questions?

Jan 5, 2018, 8:16 PM

I know that Census is supposed to be responding to that, but I am told that in the ACS the drop off is something between 4 and 6 percent. But there will be a more exact data set known



iMessage





MN

Mark &gt;

Jan 5, 2018, 8:16 PM

I know that Census is supposed to be responding to that, but I am told that in the ACS the drop off is something between 4 and 6 percent. But there will be a more exact data set known soon.

There is also DECENNIAL CENSUS response rates related to citizenship ( long form data ) from the 2000 Census.

Thanks



iMessage

